

United States
Circuit Court of Appeals
For the Ninth Circuit

LEONARD R. KING,

Appellant,

vs.

SIX COMPANIES, INC., a corporation, and H.
S. ANDERSON and W. S. ANDERSON, co-
partners, doing business under the firm name
and style of Anderson Boarding and Supply
Company,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Nevada.

FILED

OCT 13 1932

PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Assignment of Errors.....	36
Bond on Removal.....	5
Bond on Appeal.....	37
Complaint	8
Citation on Appeal.....	41
Certificate of Clerk to Record on Appeal.....	43
Demurrer of Six Companies, Inc.	26
Demurrer of H. S. Anderson and W. S. Anderson	28
Decision of Court on Demurrers of Defendants	31
Judgment	32
Names and Addresses of Attorneys of Record.	1
Order for Removal.....	7
Order Allowing Appeal.....	35
Petition for Removal of Cause.....	1
Petition for and Order Allowing Appeal.....	33
Praecipe for Transcript of Record on Appeal	39

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

Messrs. ALBERT DUFFILL and HARRY H.
AUSTIN, Las Vegas, Nevada,
For the Plaintiff in Error,

Messrs. McNAMEE & McNAMEE, Las Vegas,
Nevada, Messrs. STEVENS & HENDERSON,
Las Vegas, Nevada,
For the Defendants in Error. [1]*

In the Eighth Judicial District Court of the State
of Nevada, in and for the County of Clark.

LEONARD R. KING,
Plaintiff,
vs.

SIX COMPANIES INC., a corporation, and H.
S. ANDERSON and W. S. ANDERSON, co-
partners, doing business under the firm name
and style of Anderson Boarding and Supply
Company,
Defendants.

PETITION FOR REMOVAL OF CAUSE TO
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA.

To the Eighth Judicial District Court of the State
of Nevada, in and for the County of Clark:

The petition of the defendants above named re-
spectfully represents:

*Page numbering appearing at the foot of page of original certified
Transcript of Record.

I.

The above entitled action has been brought in the above entitled Court and is now pending therein, and that the time within which said defendants are required to answer or otherwise plead has not yet expired.

II.

The said action is of a civil nature, being an action to recover damages for alleged personal injuries. It is an action of which the United States District Courts are given jurisdiction as will appear from the allegations of this petition and the complaint on file in this action.

III.

The value of the matter in controversy in said action is in excess of Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs, as appears from the allegations of plaintiff's complaint on file herein, which is hereby referred to and made a part hereof, [2] wherein plaintiff prays for damages in the sum of \$10,303.50.

IV.

Said action involves a controversy which is wholly between citizens of different States and the defendants, your petitioners, are not citizens or residents of the State of Nevada.

At the time when said action was commenced plaintiff was, and at the present time plaintiff is, a citizen of the State of Oklahoma residing therein, and that the defendant Six Companies, Inc., one of your petitioners, when said action was commenced and at the present time is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and having its office and principal place of business in the City of Wilmington, in the State of Delaware, and was and is a citizen of the State of Delaware, and at the time when said action was commenced the defendants H. S. Anderson and W. S. Anderson were, and each of them was, and at the present time are, and each of them is, citizens and residents of the State of California.

V.

Your petitioners present herewith a good and sufficient bond as provided by the statute in such cases that they will enter in the District Court of the United States for the District of Nevada within thirty days from the date of the filing of this Petition a certified copy of the record in this suit, and that they will pay all costs which may be awarded by the said District Court in case said Court shall hold that this suit was wrongfully or improperly removed thereto.

WHEREFORE, your petitioners pray that this Court proceed no further herein, excepting to make an order accepting the bond presented herewith

and directing that a transcript of the record herein be made for filing in the United States District Court for the District of Nevada.

F. R. McNAMEE,

LEO A. McNAMEE and [3]

FRANK McNAMEE, JR.,

Attorneys for Defendants, Six Companies, Inc.

STEVENS & HENDERSON,

Attorneys for Defendants, H. S. Anderson and W. S. Anderson.

[Endorsed]: Filed Oct. 5, 1931. Wm. L. Scott, Clerk.

State of Nevada,
County of Clark.—ss.

H. S. Anderson being first duly sworn, deposes and says: That he is one of the defendants in the above entitled action and that he makes this verification on behalf of himself and his co-defendant; that affiant has read over the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes the same to be true.

H. S. ANDERSON.

Subscribed and sworn to before me this 2nd day of October, 1931.

[Notarial Seal]

FRANK A. STEVENS,

Notary Public.

Receipt of a copy of the foregoing admitted this 3rd day of October, 1931.

ALBERT DUFFILL,
HARRY H. AUSTIN,
Attorneys for Plaintiff.

[Endorsed]: No. 2469. U. S. Dist. Court, Dist. Nevada. Filed Oct. 29, 1931. E. O. Patterson, Clerk. [4]

[Title of Court and Cause.]

BOND ON REMOVAL.

KNOW ALL MEN BY THESE PRESENTS: That Union Indemnity Company, a corporation of the State of Louisiana, authorized to do a general surety business in the State of Nevada, as Surety, is held and firmly bound unto Leonard R. King in the full and just sum of five hundred (\$500.00) dollars, for the payment of which well and truly to be made, said Surety binds itself, its successors and assigns firmly by these presents.

The condition of the above obligation is such that,

WHEREAS, Six Companies, Inc., a corporation, and H. S. Anderson and W. S. Anderson, co-partners, doing business under the firm name and style of Anderson Boarding and Supply Company, the defendants in the above entitled action, have petitioned, or are about to petition the above entitled Court for the removal of a certain cause therein pending wherein Leonard R. King is the plaintiff,

and the said Six Companies, Inc., a corporation, and H. S. Anderson and W. S. Anderson, co-partners, doing business under the firm name and style of Anderson Boarding and Supply Company, are defendants, to the District Court of the United States for the District of Nevada for further proceedings on grounds in said Petition set forth,

NOW, THEREFORE, if said Six Companies, Inc., a corporation, and [5] H. S. Anderson and W. S. Anderson, co-partners, doing business under the firm name and style of Anderson Boarding and Supply Company, shall enter in such District Court of the United States within thirty (30) days from the date of filing of said Petition, a certified copy of the record in such suit, and shall well and truly pay all costs that may be awarded by said District Court of the United States if such District Court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, said Union Indemnity Company has caused this undertaking to be duly executed and its corporate seal hereto affixed by its officer thereunto duly authorized, this 3rd day of October, 1931.

[Corporate Seal]

UNION INDEMNITY COMPANY,
By E. W. CRAGIN,

Attorney-in-fact.

[Endorsed]: Filed Oct. 5, 1931. Wm. L. Scott,
Clerk.

Receipt of a copy of the foregoing admitted this
3rd day of October, 1931.

ALBERT DUFFILL,
HARRY H. AUSTIN,
Attys.

[Endorsed]: No. 2469. U. S. Dist. Court, Dist.
Nevada. Filed Oct. 29, 1931. E. O. Patterson,
Clerk. [6]

[Title of Court and Cause.]

ORDER FOR REMOVAL.

This cause coming on for hearing upon petition and bond of the defendants herein for an order transferring this cause to the United States District Court, for the District of Nevada, and it appearing to the court that the defendants have filed their petition for such removal in due form of law and that the defendants have filed their bond duly conditioned with good and sufficient sureties as provided by law and that defendants have given plaintiff due and regular notice thereof, and it appearing to the court that this a proper cause for removal to said District Court of the United States:

NOW, THEREFORE, said petition and bond are hereby accepted and it is hereby ordered and adjudged that this cause be and it is hereby removed to the United States District Court, for the District of Nevada, and the clerk is hereby di-

rected to make up the record in said cause for transmission to said court forthwith.

Done in open court this 5th day of October, 1931.

WM. E. ORR,
District Judge.

[Endorsed]: Filed Oct 5, 1931. Wm. L. Scott,
Clerk.

[Endorsed]: No. 2469. U. S. Dist. Court, Dist.
Nevada. Filed Oct. 29, 1931. E. O. Patterson,
Clerk. [7]

COMPLAINT.

Plaintiff complains of the defendants and alleges:

I.

That at all the times hereinafter mentioned, the defendant, Six Companies, Incorporated, was and still is a corporation, organized, created and existing under and by virtue of the laws of the State of Delaware.

II.

That at all the times hereinafter mentioned, the defendants, H. S. Anderson and W. S. Anderson, were and still are co-partners, doing business under the firm name and style of Anderson Boarding and Supply Company.

III.

That at all the times hereinafter mentioned, the defendant, Six Companies, Incorporated, was and still is engaged in the business of building and

constructing a dam in the Colorado River, under a contract with the United States government, at a price in excess of fifty-eight million dollars, and that said dam, or dam project, is popularly known as the Boulder Dam but has been officially designated as Hoover Dam. [8]

IV.

That at all the time hereinafter mentioned, the defendants, H. S. Anderson and W. S. Anderson, co-partners as aforesaid, were and still are engaged in the business of housing and feeding the employees of said defendant, Six Companies, Incorporated, on said dam and dam project, under and by virtue of a contract with said defendant, Six Companies, Incorporated, by the terms of which said defendant, Six Companies, Incorporated, promises to, and does deduct from each pay check issued by it to each of its said employees for labor, on said project, a certain stipulated sum or sums, which it agrees to and does pay over unto the said defendants, Andersons, as such co-partners, for the said housing and feeding of each said employee and that all the buildings, fixtures and appliances, necessary and requisite thereto were and are built, furnished, maintained, and operated, exclusively by these defendants, including the boiler hereinafter mentioned.

V.

That all of the construction camps of said defendants, including all buildings, fixtures and ap-

pliances, and said boiler, referred to in the last above paragraph, and most of the activities of said defendants, in connection with said dam project, are located and carried on in said county and state, in and near the Black Canyon of the said Colorado River, where said dam was and now is being so constructed.

VI.

That in the performance of said contracts, and in connection with, and in furtherance of said work of building said dam, these defendants did, during the early portion of the year 1931, build, erect and maintain large construction camps, buildings and other facilities for hiring men for work on said dam, for keeping accounts of their time and services, for housing and feeding them and for encouraging men to work on said dam, some in said Black Canyon, some at Boulder City near said Black Canyon, and some at other places [9] in the vicinity of said canyon and dam, and that for a long time prior to, and at the time of the injury herein complained of, said camps, buildings and other facilities were and are in active operation for, and in furtherance of said purposes, and that for a long time prior to and at the time of the injury herein complained of, the defendant Six Companies, Incorporated, employed approximately fourteen hundred men in connection with its said work on said dam, all of whom were housed, fed and cared for in said camps and buildings, by said defendants, Andersons.

VII.

That during all of the times herein mentioned, a severe industrial and business depression obtained throughout the entire world, that many men were and are out of employment, who were and are willing to work, and that such condition did and does obtain throughout the entire United States, including the State of Nevada, and that by reason thereof and because of the great publicity given to the construction of said dam, many men were and are encouraged to come to said dam in search of employment, from all parts of the nation.

VIII.

That the summer of the year 1931 was an unusually hot summer in said county, and that the temperatures at the several places where men were employed and kept, immediately prior to the injury herein complained of, in said construction work, often exceeded 120 degrees, Fahrenheit, and that by reason thereof, and of the nature of said work and the low scale of wages obtaining, and of general conditions thereat, many men were overcome with heat and were forced to quit their work on said project and many others did quit, from time to time, and that the defendant, Six Companies, Incorporated, was, therefore, and because of their desire to hasten the work on said dam, immediately prior to and at the time of the injury herein complained of, constantly hiring and employing new men at said camps and for said work. [10]

IX.

That because of the facts hereinabove alleged, many men, for a long time prior to and at the time of the injury herein complained of, came from all parts of the nation to seek work on said dam, under the defendants, and for such purpose did wait, and remain and spend their time about the camps and works of these defendants, waiting, hoping and expecting to be given employment by said defendants, and did sleep of nights upon the porches and about the buildings and on the desert in close proximity to the camps, bunk houses and other buildings and works of the defendants, and that the defendants did, during all such times, and in order to and for the purpose of having men readily available to fill the places of any of defendants' employees who might quit their employment, and for the further purpose of having men readily available, for any new work on said dam which might at any time be commenced, encourage and invite said men, including this plaintiff to wait and remain and spend their time about said premises, and did often furnish or cause to be furnished to such men, including this plaintiff, food, in order that such sojourning, waiting and remaining about said premises might continue.

X.

That said dam and most of the work, done in the construction thereof by defendants, and certain of the said construction camps and buildings, were,

during all the times herein mentioned, located approximately thirty miles from the City of Las Vegas, Clark County, Nevada, which is the nearest town to said dam; that other of said camps, buildings and works, maintained by said defendants, were, at all times herein mentioned, located at a place known as Boulder City, which is the main construction camp for said project, and which is distant from said City of Las Vegas, about twenty four miles, and that most of the men seeking employment on said project, including this plaintiff, had no other means of reaching said project, camps and work, than to walk thereto, from said City of Las Vegas. [11]

XI.

That some several days prior to the injury herein complained of, these defendants installed, in a horizontal position, some few hundred feet from their main dormitory or bunk houses at said Boulder City and adjacent to their main commissary or mess house at said Boulder City, a tubular boiler for the purpose of generating steam for and in connection with said commissary and for other uses and purposes in and about and in connection with the construction work on said dam, and connected the same with pipe lines for furnishing fuel oil to said boiler, water to said boiler and for taking steam away from said boiler for said purposes and uses, and that for some time immediately prior to and at the time of the injury herein complained

of, these defendants were operating and maintaining said boiler and generating steam therein, for said uses, and were, during all such times, using fuel oil, as and for fuel in said boiler.

XII.

That this plaintiff, together with other men from various parts of the country, had been waiting around the said several operations of these defendants at their so-called River Camp in said Black Canyon and at their so-called Boulder City Camp at said Boulder City, and at other places near their said operations, for several days prior to and at the time of the injury herein complained of, for the express purpose, and none other, of securing employment with these defendants on said dam project, and at and upon the invitation of these defendants, so to do; and that on Tuesday, the 4th day of August, A. D. 1931, this defendant, Six Companies, Incorporated, expressly invited and encouraged this plaintiff to remain about said operations and said camps, by stating to this plaintiff that the next succeeding day, to-wit, August 5th, 1931, would be pay day and that certain or some of its employees were sure to quit their employment and that said defendant, Six Companies, Incorporated, did say to this plaintiff that if he, this plaintiff, would "stick [12] around and be here to-morrow," or words to that effect, that it, the said defendant, Six Companies, Incorporated, would "put him on," or words to that effect, meaning

thereby, would give plaintiff employment on said project; that said express invitation to remain, was given this plaintiff by two of the so-called "shiffters" or shift bosses in the employ of this defendant, Six Companies, Incorporated, to-wit, a man called "Whitey" and another man, called "Bob Thompson" and that at said time said two men were in the employ of this defendant, Six Companies, Incorporated, as shiffters or shift bosses and that they then and there had the authority to hire men for said work for said defendant, Six Companies, Incorporated, and had, immediately prior thereto, been hiring men for work on said job for said defendant, Six Companies, Incorporated.

That these defendants, Andersons, did also invite and encourage, immediately prior to and at the time of the injury herein complained of, this plaintiff and others to wait and remain about said camps and did then furnish some of them, including this plaintiff, food, in order to enable them so to do.

XIII.

That during the night of August 4th, 1931, and in the early morning of August 5th, 1931, and prior to the time of the injury herein complained of, a heavy rain fall took place and occurred at said construction camps and, generally, over the entire south end of said county, and that during said night and early morning, plaintiff, and many other men so waiting employment as aforesaid, undertook to and did sleep upon the porches of certain of said

bunk houses and other buildings at said Boulder City Camp, and while so sleeping, or attempting to sleep, plaintiff, and said other men, became wet and drenched to the skin, from said rain.

XIV.

That at on or about the hour of 3:30 or 4 o'clock in the morning of August 5th, 1931, plaintiff, while thus wet to the skin from said rain, went to said boiler to dry his clothes from the heat [13] of said boiler, and asked permission so to do, of these defendants, which was immediately given him; that there were then and there several other men so waiting employment, who were also drying their clothing from the heat of said boiler, and whose presence there was known to these defendants and to this plaintiff.

XV.

That said boiler at said time, and at the time of the injury herein complained of, was in the exclusive possession and under the exclusive control and management of these defendants, was then and there in operation, generating steam, was located in the open air, uninclosed, and that for some time prior to and at the time of the injury herein complained of, there was a high wind blowing in the vicinity thereof.

XVI.

That at said time, plaintiff took a position at the side of said boiler, in the lee of the wind, and there

sat down to dry his clothing and that his said position was a dangerous position and that the danger thereof was well known to these defendants but was unknown to plaintiff; that while thus sitting, and soon after his arrival at said boiler, an explosion of gas in the fire box of said boiler took place and shot and expelled with great force and heat, flames, fire, burning gas and oil, and hot oil yet unconsumed, onto plaintiff's body, through an opening or openings in the metal wall of the fire box of said boiler, located somewhat under the tubular portion of said boiler containing the flues.

XVII.

That the injuries herein complained of, were the direct and positive result of said explosion and that said explosion occurred by reason of the careless and negligent manner in which these defendants, installed said boiler and then and there operated the same.

XVIII.

That this plaintiff is informed and does believe and therefore [14] alleges the fact to be that these defendants installed and, up to and including the time of the injury herein complained of, operated and maintained said boiler with an automatic oil feed device, designed and intended to feed into the fire box of said boiler, a certain regulated amount of fuel oil at all times, and that plaintiff is informed and does believe and therefore alleges the fact to be that these defendants installed and up to and

including the time of the injury herein complained of, operated and maintained said boiler with an automatic water control device, designed and intended to supply said boiler with the requisite amount of water at all times; that from the time of the installation of said boiler by these defendants, up to and including the time of the injury herein complained of, these defendants employed two men, only, to fire, manage and care for the operation of said boiler during each and every twenty four hour period and that each of said men worked a twelve hour shift, in the management of said boiler, and in addition thereto was required by these defendants, each said twelve hour shift, to look after and manage the operation of defendants' ice machine and cooling towers and other machinery and appliances in the vicinity of said boiler and that when so engaged in any of said last named duties, each said employee was necessarily required to be and was absent from said boiler, and that at the time of the injury herein complained of, each and all of these facts were well known to defendants but were unknown to this plaintiff.

XIX.

That it was the duty of these defendants, under the law, in installing and connecting up said boiler with said automatic fuel feed device, if depending wholly or partially upon such automatic fuel feed device to supply said boiler with the proper amount of fuel at any or all times, to see to it that said automatic fuel feed device would at any and all such

times, feed into said boiler a proper amount of fuel oil under any and all conditions, so as neither to choke the fire box of said boiler with an over supply of fuel [15] oil, nor to supply fuel oil so slowly thereto as to permit the fire therein to die down and permit an accumulation of gas therefrom that might thereafter explode and do injury to persons lawfully in the vicinity thereof; and that plaintiff is informed and does believe and therefore alleges the fact to be, that these defendants did so carelessly and negligently install said automatic fuel feed device that the same would not and did not at all times supply said boiler with the proper amount of fuel oil and that by reason thereof, at the time of the injury herein complained of, gas did accumulate in the fire box of said boiler and did explode and cause the injury herein alleged.

XX.

That at the time of said injury, it was, then and there the duty of defendants, under the law, to operate and maintain said boiler in a safe and careful manner, to the end that persons lawfully in the vicinity thereof, might not be injured by the careless and negligent management and operation thereof, and it was the further duty of the defendants, under the law, knowing of their own careless and negligent management and operation of said boiler, and of the dangers to plaintiff therefrom in his said position at the side of said boiler, to warn this plaintiff thereof, in order that he might not be injured

thereby; that under the circumstances as herein alleged, it was 'the duty of these defendants to see to it that a proper draft of air was provided for in the operation of said boiler and to that end it was the duty of these defendants to enclose said boiler from the wind, to provide a smoke stack for said boiler of sufficient height to create a draft of air through the fire box of said boiler, to keep the flues thereof clean and free from soot and carbon, all to the end that any and all gas and gasses that might be formed in the fire box of said boiler might be consumed in fire as fast as formed, or drawn out into the atmosphere through the flues and smoke stack of said boiler and not cause an explosion such as injured this plaintiff; that it was, at the time of the injury herein com- [16] plained of, the further duty of these defendants to so regulate the amount of fuel going into said fire box, under any and all conditions, as not to choke or underfeed the fire in said fire box or in any wise permit an accumulation of unconsumed gas therein that might explode and cause injury to this plaintiff or other persons lawfully at said boiler; that it was the further duty of these defendants, at the time of said injury, to keep securely closed, all openings in the walls of said fire box of said boiler from which fire and flames and burning oil and gases might escape or be expelled to burn or injure plaintiff or other persons lawfully in the vicinity thereof; that it was the further duty of these defendants, at said time, to keep a competent man constantly present at said

boiler and in charge thereof, in order that no accumulation of gas or gases might collect in the fire box of the same and explode and injure this plaintiff or other persons lawfully present thereat.

XXI.

That prior to and at the time of the injury herein mentioned, these defendants did totally disregard and violate each and every of their aforesaid duties, and did carelessly and negligently fail and neglect to enclose said boiler from the wind, fail and neglect to provide said boiler with a smoke stack of sufficient height to insure an ordinary draft of air through said boiler, under ordinary conditions, fail and neglect to properly regulate the amount of fuel going into said boiler at said time, fail and neglect to keep the flues thereof clean and free from soot and carbon, fail and neglect to keep the openings closed in the walls of the fire box of said boiler through which the said explosion expelled flames and fire and burning oil and gases and burned this plaintiff as herein alleged, fail and neglect to provide for sufficient draft of air through said fire box and boiler to carry off into the atmosphere any accumulation of gas or gases in said fire box, fail and neglect to keep a competent man constantly present at and in charge of said boiler, fail and neglect to warn this plaintiff of the danger to him in his said [17] position at the side of said boiler, and that by reason thereof and of the careless and negligent acts of these defendants and the careless

and negligent management of said boiler by these defendants, as herein alleged, this plaintiff was severely burned and injured, as will more fully appear hereinafter.

XXII.

That at the time of said injury, said night was dark and stormy and that plaintiff was then and there unaware of the careless and negligent acts of these defendants as herein alleged, except that plaintiff did know that said boiler was not inclosed, and plaintiff was then and there unaware of any danger to him in his said position at the side of said boiler.

XXIII.

That at the time of said injury, and for some little time immediately prior thereto, neither of the defendants, nor any employee of any of said defendants was present at said boiler, though this fact was unknown to plaintiff at said time.

XXIV.

That immediately following said injury, plaintiff appealed to these defendants for medical aid and attention, in order to lessen the effects of his said injuries and reduce the pain and suffering thereof, but the same was denied and plaintiff was compelled to and did wander about said camps, with a strong wind blowing against his burned and exposed person, seeking some means to get to Las Vegas for treatment, and thereby causing him to

suffer much severe pain that would have been somewhat relieved by immediate medical attention, and that several hours elapsed before plaintiff reached a hospital at Las Vegas and was first treated for said injuries.

XXV.

That said explosion, and the flames and fire and burning oil and gases by it expelled from said fire box with such force and violence as herein alleged, severely burned the whole left side of plaintiff's face and head, portions of the top and back of his head, [18] permanently injured his left eye, burned both of plaintiff's hands and arms and all of his chest, the front and top of both shoulders and the greater portion of his abdomen, and that the same caused large blisters and sores upon said portions of plaintiff's body, all of which caused plaintiff to suffer great physical pain and mental anguish; that plaintiff believes and therefore alleges the fact to be, that as a result thereof his eye sight has been permanently impaired; that plaintiff is informed and does believe and therefore alleges the fact to be that as a result of such burns, such an increased load was and has been and now is being placed upon his kidneys as to greatly and permanently weaken and injure said organs and render him susceptible to Bright's disease or Nephritis; that so much of the normal skin structure on those parts of his body hereinabove mentioned has been destroyed that there will be permanent contractions of the replacement skin surfaces, causing permanent deformity and

disuse of the affected parts; that the replacement skin tissue on said portions of plaintiff's body, commonly called scar or connective tissue, is and will permanently be tender and unsightly, easily broken down and is and will be permanently and almost entirely without the special nerve endings and feelings of normal skin; that as a direct result of the shock to this plaintiff, from the happening of said burns and the intense pain and suffering following the same, and resulting therefrom, plaintiff's nerves have been permanently shattered and injured and plaintiff is now and continually will be much more nervous and more easily disturbed than prior thereto, that as a direct result of said injuries, so caused by the negligence and carelessness of these defendants, this plaintiff is now and permanently will be unable to do the same kind of labor as heretofore, all to his damage in the sum of ten thousand dollars.

XXVI.

That as a direct result of said injury, and of the carelessness and negligence of these defendants as herein alleged, plaintiff was [19] confined in the Ferguson-Balcom Hospital at Las Vegas, Nevada, for a period of seven days and was confined thereafter in the County Hospital of Clark County, Nevada, for a period of twenty days and has necessarily incurred and is liable to pay unto said Clark County, Nevada, for such hospital treatment and for medicines and nursing, in an endeavor to cure

himself of said injuries, the sum of Sixty-eight and 50/100 dollars.

XXVII.

That prior to said injury, plaintiff was a strong, able bodied man of the age of twenty-nine years, capable of earning and would have earned, except for said injury, the sum of at least five dollars per day, at any kind of ordinary unskilled work, and that solely by reason of said injuries plaintiff has been unable to work at any kind of work and has lost all his time, to his further damage in the sum of two hundred thirty-five dollars.

Wherefore plaintiff prays judgment against these defendants, and against each and every of them, in the sum of ten thousand, three hundred and three and 50/100 dollars, and for his costs and disbursements herein.

ALBERT DUFFILL

and

HARRY H. AUSTIN,

Attorneys for Plaintiff, Professional Building, Las Vegas, Nevada.

[Endorsed]: Filed Sep. 22, 1931. Wm. L. Scott, Clerk.

State of Nevada,
County of Clark.—ss.

Harry H. Austin, being first duly sworn deposes and says: that he is one of the attorneys for the plaintiff in the above entitled action; that he has

read the above and foregoing complaint, knows the contents thereof and that the same is true, according to the information furnished him by his said client, the plaintiff herein, ex- [20] cept as to such facts as are therein stated on plaintiff's information and belief, and as to those facts, he believes it to be true; that the reason why this verification is not made by said plaintiff is that said plaintiff is not now in said Clark County, Nevada, wherein reside both of plaintiff's attorneys herein.

HARRY H. AUSTIN.

Subscribed and sworn to before me, a Notary Public within and for said County and State, this 22nd day of September, A. D. 1931.

[Notarial Seal]

Alfred Boyle,

Notary Public in and for the County of
Clark, State of Nevada. My commission
expires Sept. 6, 1933.

[Endorsed]: No. 2469. U. S. Dist. Court, Dist. Nevada. Filed Oct. 29, 1931. E. O. Patterson, Clerk. [21]

[Title of Court and Cause.]

DEMURRER.

Comes now the Six Companies, Inc., a corporation, and appearing for itself, but not for the other defendants, and demurs to plaintiff's complaint on file herein, on the following grounds:

I.

That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

II.

That said complaint is uncertain in the following particulars:

(a) It cannot be determined from said complaint whether this defendant encouraged and invited the plaintiff to wait and/or remain and/or spend his time about the premises upon which the tubular boiler mentioned in said complaint was located and operated. [22]

(b) That it cannot be determined from said complaint what particular portion of the premises or what particular operations of its said camp the plaintiff was invited to "stick around."

(c) That it cannot be determined from said complaint which of the defendants gave the plaintiff permission to go to said boiler to dry his clothes from the heat of said boiler, as stated in Paragraph 14 of said complaint.

(d) That it cannot be determined from said complaint wherein the position taken by the plaintiff at the side of the boiler in the lea of the wind was a dangerous position.

III.

That said complaint is ambiguous for the same reasons that it is uncertain.

IV.

That said complaint is unintelligible for the same reasons that it is uncertain.

F. R. McNAMEE,
LEO A. McNAMEE,
FRANK McNAMEE, JR.,
Attorneys for Defendant,
Six Companies, Inc.

I, Leo A. McNamee, do hereby certify that I am one of the attorneys for said defendant, Six Companies, Inc., a corporation, and make this certificate on behalf of the attorneys for said last named defendant, and that, in my opinion, the foregoing Demurrer is well founded in point of law.

LEO A. McNAMEE.

Due service of the foregoing Demurrer is hereby admitted this 23rd day of January, 1932.

ALBERT DUFFILL and
HARRY H. AUSTIN,
Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 25, 1932. E. O. Patterson, Clerk. [23]

[Title of Court and Cause.]

DEMURRER OF DEFENDANTS, H. S. ANDERSON AND W. S. ANDERSON.

The defendants, H. S. Anderson and W. S. Anderson, come by their attorneys and demur to the complaint herein, on the following grounds:

I.

That said complaint does not state facts sufficient to constitute a cause of action against these defendants or either of them.

II.

That said complaint is uncertain in the following particulars:

(a) It cannot be determined from said complaint whether these defendants or either of them encouraged and/or invited the plaintiff to wait and/or remain and/or spend his time about the premises upon which the tubular boiler mentioned in said complaint was located and operated.

(b) It cannot be determined from said complaint whether these defendants or either of them invited the plaintiff on or about the hour of 3:50 or 4 o'clock in the morning of August 5th, 1931, to go to said tubular boiler to dry his clothes from the heat of said boiler.

(c) That it cannot be determined from said complaint what particular portions of said camps these defendants or either of them did invite and/or encourage said plaintiff to wait and/or remain about.

(d) That it cannot be determined from said complaint which of the defendants, or their or either of their agents, servants, officers or employees gave the plaintiff permission to go to said

boiler to dry his clothes from the heat of said boiler, as stated in Paragraph 14 of said complaint.

(e) That it cannot be determined from said complaint wherein the position taken by the plaintiff at the side of the boiler in the lee of the wind was a dangerous position.

III.

That said complaint is ambiguous for the same reasons that it is uncertain.

IV.

That said complaint is unintelligible for the same reasons that it is uncertain.

STEVENS & HENDERSON,
Attorneys for said Defendants H. S.
Anderson and W. S. Anderson.

I, F. A. Stevens, do hereby certify that I am one of the attorneys for said defendants, H. S. Anderson and W. S. Anderson, and make this certificate on behalf of the attorneys for said last named defendants, and that, in my opinion, the foregoing demurrer is well founded in point of law.

STEVENS & HENDERSON,
By F. A. STEVENS. [25]

Due service of the foregoing Demurrer is hereby admitted this 23rd day of January, A. D. 1932.

ALBERT DUFFILL and
HARRY H. AUSTIN,
Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 25, 1932. E. O. Patterson, Clerk. [26]

[Title of Court and Cause.]

DECISION OF THE COURT ON THE DEMURRERS OF THE DEFENDANTS,
HANDLED DOWN APRIL 7, 1932.

Minutes of Court, April 7, 1932.

The demurrers of the defendants in this case having heretofore been argued and submitted, IT IS NOW BY THE COURT ORDERED that the demurrer of the defendant Six Companies, Inc., a corporation, to plaintiff's complaint, be, and the same is hereby overruled as to ground one thereof; is sustained as to paragraph (c) of ground two; also sustained as to paragraphs three and four, and is otherwise overruled; and that the demurrer of the defendants H. S. Anderson and W. S. Anderson, co-partners, etc., to plaintiff's complaint is hereby sustained as to ground one thereof. IT IS FURTHER ORDERED that plaintiff be and he is hereby allowed twenty days from and after this date within which to file an amended complaint herein. [27]

In the District Court of the United States, in and
for the District of Nevada.

LEONARD R. KING,

Plaintiff,

vs.

SIX COMPANIES, INC., a corporation, and H. S.
ANDERSON and W. S. ANDERSON, co-
partners, doing business under the firm name
and style of ANDERSON BOARDING AND
SUPPLY COMPANY,

Defendants.

JUDGMENT ON DEMURRER.

This matter having come on regularly to be heard on the 7th day of March, 1932, before the Court upon the issue of law raised by the Demurrers of the defendants to plaintiff's complaint, Harry H. Austin, Esq., appearing for and on behalf of the plaintiff, and Leo A. McNamee, Esq., appearing for and on behalf of the defendant. Six Companies, Inc., a corporation, and F. A. Stevens, Esq., appearing for and on behalf of the defendants H. S. Anderson and W. S. Anderson, co-partners, doing business under the firm name and style of Anderson Boarding and Supply Company, and the Court having heard the arguments on said demurrers and having duly considered the same, made its [28] order on the 7th day of April, 1932, sustaining said demurrers to said Complaint, and further ordering that the plaintiff be allowed twenty (20) days from and after said April 7, 1932,

in which to file an amended complaint, and more than twenty days having expired from the date of said decision and order, and said plaintiff having failed within said period of time to file an amended complaint in said action, and no further time having been granted or asked for,—

NOW, THEREFORE, by reason of the sustaining of the demurrers to said complaint and by reason of the failure of the plaintiff to amend said complaint within the time allowed as aforesaid,—

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff take nothing by his said action, and that the complaint herein be and the same is hereby dismissed, and that the defendants have judgment for their costs in said action taxed at \$14.00.

Done in open Court this 10th day of May, 1932.

FRANK H. NORCROSS,

District Judge.

[Endorsed]: Filed May 10th, 1932. E. O. Patterson, Clerk. [29]

[Title of Court and Cause,]

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable, the District Court of the United States, in and for the District of Nevada, and to the Honorable F. H. Norcross, Judge of said Court:

Comes now the plaintiff, Leonard R. King, and says that on the 10th day of May, A. D. 1932, this

Court entered judgment in the above case in favor of the defendants and against the plaintiff, adjudging that plaintiff take nothing by this action, that his complaint herein be dismissed and adjudging that defendants recover of him their costs herein, in which judgment, and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of the plaintiff, all of which will in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays an appeal to the United [30] States Circuit Court of Appeals for the Ninth Circuit for the correction of said errors; that such appeal be allowed by this Court; that a citation may be issued as provided by law; that an order be made fixing the amount of security to be given in bond, without supersedeas, to be filed herein and conditioned as the law directs, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit sitting at the City of San Francisco, State of California. And your petitioner will ever pray.

ALBERT DUFFILL

and

HARRY H. AUSTIN,

Attorneys for the plaintiff,

Las Vegas, Nevada.

ORDER ALLOWING APPEAL.

Upon reading the above and foregoing petition of the plaintiff herein, heretofore filed herein and now presented to the Court, and upon the application of the said plaintiff, it is

Ordered that said petition be and the same is hereby granted and said plaintiff is hereby allowed to make an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to have reviewed the judgment heretofore entered herein, that citation therefor issue according to law, that the amount of the bond on appeal be and is hereby fixed in the sum of Three Hundred Dollars and that a certified transcript of the record and proceedings herein be transmitted to the last above named Circuit Court of Appeals at the City of San Francisco, State of California.

Dated at Carson City, Nevada, this 8th day of August, 1932.

FRANK H. NORCROSS,
United States District Judge.

[Endorsed]: Filed Aug. 5th, 1932. E. O. Patterson, Clerk. [31]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now the plaintiff, Leonard R. King, and in connection with and as a part of his petition for appeal herein, alleges that there is error in the record and judgment in this cause, and assigns as errors upon which he expects to rely in the Appellate Court, the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment entered herein, the following:

First Assignment of Error.

That the Court erred in sustaining the general demurrer, to the complaint, of the defendants, H. S. Anderson and W. S. Anderson, the same being paragraph one (1) of their written demurrer as filed, charging the complaint with failure to state facts sufficient to constitute a cause of action against said defendants. [32]

Second Assignment of Error.

That the Court erred in sustaining the special demurrer, to the complaint, of the defendant, Six Companies, Inc., the same being paragraph (c) of grounds II, III and IV of said defendant's written demurrer as filed, which reads as follows:

“(c) That it cannot be determined from said complaint which of the defendants gave the plaintiff permission to go to said boiler to dry his clothes from the heat of said boiler, as stated in Paragraph 14 of said complaint,”

said ground II, charging uncertainty, said ground III, charging ambiguity, and said ground IV, charging unintelligibility.

Third Assignment of Error.

That the Court erred in entering final judgment in favor of the defendants.

Wherefore, the plaintiff, Leonard R. King, prays that said errors be corrected and that the said judgment of the District Court be reversed.

ALBERT DUFFILL

and

HARRY H. AUSTIN,

Attorneys for the Plaintiff,

Las Vegas, Nevada.

[Endorsed]: Filed Aug. 5th, 1932. E. O. Patterson, Clerk. [33]

[Title of Court and Cause.]

UNDERTAKING ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That Union Indemnity Company, a corporation of the state of Louisiana, authorized to do a general surety business in the state of Nevada, as surety, is held and firmly bound unto Six Companies, Inc., a corporation, and H. S. Anderson and W. S.

Anderson, co-partners, doing business under the firm name and style of Anderson Boarding and Supply Company, the defendants in the above entitled action, in the full and just sum of Three Hundred (\$300.00) Dollars, for the payment of which well and truly to be made, said surety binds itself, its successors and assigns firmly by these presents.

The condition of this obligation is such that,

WHEREAS, the above named plaintiff, Leonard R. King, has appeal- [34] ed, or is about to appeal, to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment entered in the above entitled Court and cause on May 10th, A. D. 1932, that said plaintiff, Leonard R. King, take nothing by his said action and that his complaint therein be dismissed and awarding costs to the defendants above named,

NOW THEREFORE, in consideration of said appeal and of the premises, if the said plaintiff, Leonard R. King, shall prosecute his said appeal to effect and answer all damages and costs if he fails to make good his plea, then this obligation shall be void; otherwise to remain in full effect, force and virtue.

IN WITNESS WHEREOF, said Union Indemnity Company has caused these presents to be duly executed and its corporate seal hereto affixed by its

officer thereunto duly authorized, this 10th day of August, A. D. 1932.

[Corporate Seal
Union Indemnity
Company]

UNION INDEMNITY
COMPANY,
By E. W. Cragin,
Its attorney-in-fact.

The above and foregoing undertaking and security on appeal is hereby approved this 15th day of August, A. D. 1932.

FRANK H. NORCROSS,
Judge of the United States District
Court for the District of Nevada.

[Endorsed]: Filed Aug. 15th, 1932. E. O. Patterson, Clerk. [35]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD
ON APPEAL.

To the Clerk of the above-entitled Court:

You will please prepare a transcript on appeal herein, including the following portion of the record, to-wit:

1. The following Removal papers, to-wit:

(a) Petition of the defendants for removal of this cause from the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, to the United States District Court for the District of Nevada.

(b) Bond on Removal of said cause from said State Court to said United States Court.

(c) Order for Removal of said cause from said State Court to said United States Court.

2. The complaint of the plaintiff. [36]

3. The demurrer of the defendant, Six Companies, Inc., a corporation, in this Court.

4. The demurrer of the defendants, H. S. Anderson and W. S. Anderson, in this Court.

5. The decision of the Court on the demurrers of the defendants, handed down April 7, 1932.

6. Judgment of dismissal, entered May 10th, 1932.

7. The following appeal papers, to-wit:

(a) Petition for and order allowing appeal, and fixing the amount of cost bond.

(b) Assignment of errors.

(c) Cost bond on appeal.

(d) Praecipe for transcript of record on appeal.

(e) Original citation on appeal.

(f) Clerk's certificate to record, stating in detail the cost of certifying the record, cost of printing record and by whom paid.

ALBERT DUFFILL

and

HARRY H. AUSTIN,

Attorneys for Plaintiff and Appellant.

Service of the above praecipe is hereby admitted at Las Vegas, Clark County, Nevada, this 10th day of August, 1932.

F. R. McNAMEE,
LEO A. McNAMEE,
FRANK McNAMEE, JR.,

Attorneys for the Defendant and Appellee,
Six Companies, Inc., a Corporation.

STEVENS & HENDERSON,
Attorneys for the Defendants and Appellees,
H. S. Anderson and W. S. Anderson.

[Endorsed]: Filed Aug. 15th, 1932. E. O. Pat-
terson, Clerk. [37]

[Title of Court and Cause.]

CITATION ON APPEAL.

To Six Companies, Inc., a corporation, and to H. S. Anderson and W. S. Anderson, co-partners, doing business under the firm name and style of Anderson Boarding and Supply Company, the above named defendants, and to each and every of them, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, on the Third day of September, A. D. 1932, pursuant to appeal filed in the Clerk's office of the District Court of the United States for the District of Nevada, wherein the above named, Leonard R. King, plaintiff, is

appellant, and the above named Six Companies, Inc., a corporation, and H. S. Anderson and W. S. Anderson, co-partners, doing [38] business under the firm name and style of Anderson Boarding and Supply Company, defendants, are appellees, to show cause, if any there be, why the judgment rendered against the said Leonard R. King, plaintiff and appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable F. H. Norcross, Judge of the District Court of the United States for the District of Nevada, this 8th day of August, A. D. 1932.

[Seal]

FRANK H. NORCROSS,
Judge of the District Court of the United
States for the District of Nevada.

Service of the above citation at Las Vegas, Clark County, Nevada, is hereby acknowledged this 10th day of August, A. D. 1932.

F. R. McNAMEE,
LEO A. McNAMEE,

and

FRANK McNAMEE, JR.,

Attorneys for the Defendant and Appellee,
Six Companies, Inc., a corporation.

STEVENS & HENDERSON,
Attorneys for the Defendants and Appellees,
H. S. Anderson and W. S. Anderson.

[Endorsed]: Filed Aug. 15th, 1932. E. O. Patterson, Clerk. [39]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT, TO TRANSCRIPT OF RECORD.

United States of America,
District of Nevada.—ss.

I, E. O. Patterson, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case above entitled.

I further certify that the attached transcript, consisting of 41 typewritten pages numbered from 1 to 41, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in the praecipe filed in said case and made a part of the transcript attached hereto, as the same appears from the originals of record and on file in my office as such clerk in the City of Carson, State and District aforesaid.

I further certify that the cost for preparing and certifying to said record, amounting to \$6.40, has been paid to me by Messrs. Albert Duffill and Harry H. Austin, attorneys for the plaintiff and appellant in the above-entitled cause. [40]

And I further certify that the original citation, issued in said cause, is hereto attached.

WITNESS my hand and the seal of said United States District Court this 20th day of August, A. D. 1932.

[Seal]

E. O. PATTERSON,
Clerk U. S. District Court for the District
of Nevada. [41]

[Endorsed]: No. 6945. United States Circuit Court of Appeals for the Ninth Circuit. Leonard R. King, Appellant, vs. Six Companies, Inc., a Corporation, and H. S. Anderson and W. S. Anderson, Co-partners, doing business under the firm name and style of Anderson Boarding and Supply Company, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Nevada.

Filed August 22, 1932.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court
of Appeals for the Ninth Circuit.